IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 21, 2007

# GRASSLAND DAIRY PRODUCTS, INC. v. DURRETT CHEESE SALES, INC. v. GREGORY O. DURRETT, ET AL.

**Appeal from the Chancery Court for Coffee County**
**No. 05-441 John W. Rollins, Judge**

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**No. M2006-01279-COA-R3-CV - Filed February 1, 2008**

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The plaintiff appeals the final judgment of the trial court denying the plaintiff's request for a judgment against the defendants in accordance with the garnishment statute and the denial of the trial court to affix a lien upon a security deposit. The issue on appeal is whether a security deposit held by a landlord in connection with the lease of certain real property by the judgment debtor is subject to a garnishment, or, in the alternative, a lien pursuant to Tenn. Code Ann. § 26-2-213 to satisfy a monetary judgment. We affirm the trial court's denial of an entry of judgment against the defendants for the garnishment of the security deposit and the trial court's refusal to grant a lien upon the security deposit.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY D. BENNETT, J., joined.

Philip L. Robertson, Nashville, Tennessee, for the appellant, Grassland Dairy Products, Inc.

L. Gilbert Anglin, Murfreesboro, Tennessee, for the appellees, Gregory O. Durrett and Esaleen Durrett.

## OPINION

The plaintiff, Grassland Dairy Products, Inc., obtained a sizeable default judgment against Durrett Cheese Sales, Inc., ("Durrett Cheese") in the Circuit Court of Winnebago County, Wisconsin, in August of 2005. Thereafter, on October 24, 2005, the plaintiff filed a Notice of Registration of Foreign Judgment in the Chancery Court of Coffee County, Tennessee, pursuant to the Uniform Enforcement of Foreign Judgments Act, Tenn. Code Ann. § 26-6-101, *et seq.*

At the time of the filing of the foreign judgment, the plaintiff filed with the clerk of the court an affidavit setting forth the name and last known address of Durrett Cheese, the judgment debtor.

Tenn. Code Ann. § 26-6-105(a). Upon the filing of the foreign judgment and affidavit, the Clerk and Master issued a summons for service upon Durrett Cheese, which was served, yet Durrett Cheese failed to file a response or answer to the filing.

Thereafter, in an effort to satisfy all or part of the judgment, the plaintiff served a garnishment on Gregory O. Durrett and Esaleen Durrett (the "defendants") seeking to execute on a $75,000 security deposit made by Durrett Cheese that was being held by the defendants to secure the obligations of Durrett Cheese on a lease of real property owned by the defendants. After the defendants were served with the garnishment, they filed "a response" to the garnishment with the clerk of the court which read:

> Gregory O. Durrett and wife Esaleen Durrett hereby respond to the Garnishment served upon them on February 22, 2006 by stating that they have no property of Durrett Cheese Sales, Inc. except for a deposit with respect to a lease of 188 Volunteer Court, Manchester, Tennessee. Said deposit is security for all rental payments owed pursuant to said lease and to further secure any damages sustained to the premises. Said deposit is not owed to Durrett Cheese Sales, Inc. until such time as all rental payments have been made. Any such funds are not recoverable by a judgment creditor. . . .

Contending the response to the garnishment was insufficient, the plaintiff filed a "Motion for Conditional Judgment Against Gregory O. Durrett, and wife, Esaleen Durrett, Or, In The Alternative, for Lien in Accordance with T.C.A. § 26-2-213." In support of its motion, the plaintiff argued that the defendants' response to the garnishment "should be disregarded as non-responsive, and conditional judgment should be rendered against them," or to otherwise enter judgment in the amount of the rental deposit, or, in the alternative, to affix a lien upon the rental deposit. The trial court denied the plaintiff's motion, and this appeal followed.

## STANDARD OF REVIEW

No genuine material factual disputes are presented. The issue presented hinges on the proper interpretation of Tennessee statutes and their application to the facts of this case. Issues involving the construction of statutes and their application to facts involve questions of law. *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002); *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999). Therefore, the trial court's resolution of these issues is not entitled to Tenn. R. App. P. 13(d)'s presumption of correctness on appeal. We will review the issues de novo and reach our own independent conclusions regarding them. *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002).

## ANALYSIS

The plaintiff presents two primary issues on appeal. One, it contends the Chancellor erred in denying its request for entry of a judgment against defendants in accordance with Tenn. Code

Ann. § 26-2-101. The second issue raised by the plaintiff is that the Chancellor erred in failing to affix a lien upon the $75,000 security deposit in accordance with Tenn. Code Ann. § 26-2-213.

## GARNISHMENT

Our garnishment statute provides that "[a]ll property, debts and effects of the defendant in the possession or under the control of the garnishee shall be liable to satisfy the plaintiff's judgment from the service of the notice . . . ." Tenn. Code Ann. § 26-2-202. The statute further provides that "[i]f, upon the answer and the examination of the garnishee, it appears that the garnishee has property, debts, or effects in the garnishee's hands or under the garnishee's control, liable for the plaintiff's debt, judgment may be entered, and execution awarded for the property, money, or effects, as the case may be . . . ." Tenn. Code Ann. § 26-2-206.

The plaintiff contends the defendants' response was insufficient to establish that the security deposit was not subject to garnishment. We find no merit to this contention.

When a writ of garnishment is served on a garnishee who is "holding property of the judgment debtor" the garnishee is required to answer the writ. Tenn. R. Civ. P. 69.05. The defendants, being the garnishees, answered the writ and in their answer made it clear they contended they were not holding property that was subject to garnishment. Although the defendants did not specify subsection (3) of the rule, it is evident their defense hinges on the rule, which provides that "[w]ithin thirty days of service, the garnishee shall file with the court any money or wages (minus statutory exemptions) otherwise *payable to the judgment debtor*. Tenn. R. Civ. P. 69.05(3) (emphasis added). The defendants made it perfectly clear in their answer to the writ that they believed the security deposit *was not payable* to Durrett Cheese. The following analysis will explain why the defendants were correct.

The test of whether a judgment creditor has a right to a judgment against a garnishee "is the existence in the judgment debtor of a right to sue the garnishee and recover the sum or property sought to be subjected to garnishment." *Coke v. Coke*, 560 S.W.2d 631, 634 (Tenn. Ct. App. 1977) (citing *J.C. Mahan Motor Co. v. Lyle*, 67 S.W.2d 745, 746 (Tenn. 1934); *Dickson v. Simpson*, 113 S.W.2d 1190, 1192 (Tenn. 1937)). Further, it must be clear and obvious that the garnishees are indebted to the judgment debtor. *J. C. Mahan*, 67 S.W.2d at 746. The Supreme Court has also stated that "[w]hile obligations that are certain, although not presently due, are subject to garnishment, obligations that are contingent, in that they may never become due, are not." *Overman v. Overman*, 570 S.W.2d 857, 858 (Tenn. 1978).

In the present case, the $75,000 deposit was being held by the defendants to secure the obligation of Durrett Cheese under a February 2000 lease agreement. The ten-year lease, which contained an option for Durrett Cheese to extend the term for an additional ten years, was in effect and neither the defendants nor Durrett Cheese were in default at the time of the hearing. As the lease provides, unless and until Durrett Cheese fulfills its obligations pursuant to the lease agreement, it is not entitled to recover the security deposit. To the contrary, the lease affords the defendants the right to retain the deposit to assure the performance of Durrett's lease obligations. As a

consequence, Durrett Cheese did not have the right to recover the security deposit, or any portion of it.

The test of whether a judgment creditor has a right to a judgment against a garnishee "is the existence in the judgment debtor of a right to . . . recover the sum or property sought to be subjected to garnishment." *See Coke*, 560 S.W.2d at 634; *Dickson*, 113 S.W.2d at 1192; *J. C. Mahan*, 67 S.W.2d at 746. Durrett Cheese did not at the time of the hearing on the motion at issue have the right to recover its security deposit, and it may never have the right to do so. Conversely, the defendants' obligation to return the security deposit is contingent and may never become due. Accordingly, Durrett Cheese did not have the right to recover the deposit and the plaintiff did not have the right to a judgment against the garnishees, the defendants.

## LIEN

The plaintiff contends the Chancellor erred in refusing to affix a lien upon the $75,000 security deposit. The relevant statute, entitled "Lien upon debts due and payable in future" provides:

> If upon disclosure made on oath by the debtor it appears that the garnishee is indebted to the defendant, but that the debt is not payable and will not become due until some future time, then such judgment as the plaintiff may recover shall constitute a lien upon the debt until and at the time it becomes due and payable.

Tenn. Code Ann. § 26-2-213.

As discussed above, obligations that are contingent, meaning ones that may never become due, are not subject to garnishment. *See Overman*, 570 S.W.2d at 858. The statute, Tenn. Code Ann. § 26-2-213, affords a party the right to affix a lien upon "a debt" that will "become due and payable." The defendants, however, are not indebted to Durrett Cheese. Therefore, the defendants owe no "debt" to Durrett Cheese upon which to affix a lien pursuant to Tenn. Code Ann. § 26-2-213.

## IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the plaintiff.

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FRANK G. CLEMENT, JR., JUDGE